

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: April 19, 2006

Division: County Attorney

Bulk Item: Yes ☐ No ☒

Department: County Attorney

AGENDA ITEM WORDING:

Approval of Employment Agreement with Suzanne A. Hutton to serve as Monroe County Attorney.

ITEM BACKGROUND:

At the 3/15/06 meeting, the BOCC directed Interim County Attorney Suzanne Hutton to prepare an Employment Agreement setting forth the terms of her employment as the Monroe County Attorney.

PREVIOUS RELEVANT BOCC ACTION:

On 2/15/06 the BOCC cancelled the contract with then County Attorney John R. Collins and appointed Suzanne A. Hutton as Interim County Attorney to complete his contract.

On 3/15/06 the BOCC approved the Interim Employment Agreement through January 14, 2007.

CONTRACT/AGREEMENT CHANGES:

Changes employment agreement from Interim County Attorney to County Attorney.

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST: \$159,600 per year

BUDGETED: Yes ☒ No ☐

COST TO COUNTY: \$159,600 per year

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ☐ No ☒

AMOUNT PER MONTH _____ **Year** _____

APPROVED BY: County Atty ☒ OMB/Purchasing ☒ Risk Management ☒

DIVISION DIRECTOR APPROVAL: _____


SUZANNE A. HUTTON, COUNTY ATTORNEY

DOCUMENTATION: Included ☒ To Follow _____ Not Required _____

DISPOSITION: _____

AGENDA ITEM # _____

MEMORANDUM

April 3, 2006

TO: Mayor McCoy
From: Suzanne A. Hutton



During the negotiation of my contract, you requested that I prepare a simple comparison of the changes in terms from the prior County Attorney's contract to mine, as discussed. Attached is a table that summarizes the differences. Please note that I have requested a higher beginning salary, which is offset by the add-ons in the prior contract which are not in the proposed contract. Reasons for the higher salary include:

- No Retirement System upgrades and no purchase of credit for non-County prior government service;
- Reduction of Golden Parachute (not just 9 months salary to 6 months salary – also eliminated most of the components in calculating – 9 months of contribution to retirement, travel & phone allowances & dues)
- No compensated "contract" days under the paragraph entitled "On Call" in my contract although there were such days compensated under "Personal Leave" in the prior contract;
 - The above account for approximately \$80,000 in compensation for the term of the old contract which is not contained in my proposed contract.
- I could step aside now and resume my old position, making over \$100,000 without the responsibilities of the County Attorney position; and
- In order to retain some of the staff, whom I have learned over the years to value as dedicated County employees, they will need position upgrades, which would render inequitable a County Attorney salary of the sum previously paid, especially while also eliminating retirement upgrade, contract days and enhancements in the golden parachute.

I believe that there is a fair and equitable change in the terms of the two contracts. Except for salary for the work performed and a first-time renewal of 18 months instead of 12 months, I have conceded a number of benefits provided in the prior contract.

DIFFERENCES IN CONTRACTS

March 30, 2006

SUBJECT MATTER	COLLINS	HUTTON
1. Term	4 years	4 years
2. Renewals	Automatic, 1 year at a time	Requires parties to act to renew; 1 st time for 18 months; thereafter 1 year at a time.
3. Salary Increases	3-1/2% per year	According to increases awarded to non-union County employees.
4. Termination of Contract	<p>a. By County without Cause* – See Golden Parachute (approx. \$41,000 additional)</p> <p>b. By Resignation of Attorney – foregoes all of the golden parachute amounts, and requires repayment of amount paid into Retirement System at beginning of contract to upgrade Attorney's prior government service.</p> <p>*Other bases of termination same– for cause by County or Attorney; normal expiration and resignation. But note payment specificity under Hutton for termination other than without cause»</p>	<p>a. By County without Cause* – See Golden Parachute</p> <p>b. By Resignation of Attorney – requires payment for work through effective date of resignation plus payment for accrued annual leave & ½ sick leave, as provided to other County employees.</p> <p>*Other bases of termination same; spells out payment of salary through effective date of termination & such accrued annual and sick leave as is paid to other County employees.</p>
5. Golden Parachute	9 months salary, plus 9 months travel allowance, plus 9 months cell phone allowance, plus what would have been paid into Retirement System on Attorney's behalf for 9 months, plus 9 months proportion of annual bar dues (including Florida Bar ABA, County Bar, and various sections of the Fla. Bar & ABA) & occupational licenses and fees, plus full amounts of unused annual leave & *sick leave	6 months salary, plus full amounts of accrued annual leave and *accrued sick leave; or parties may agree to have Attorney resume an Assistant Co. Atty. position.
6. Compensation	Began at \$118,000; thereafter increased at 3-1/2% per year; making \$128,838 when contract cancelled.	Begin at \$150,000; thereafter increased according to same terms of increases awarded to non-union County employees.
6.a. Certification & Insurance	Nothing specified.	Continues same benefits available to attorney as Assistant County Attorney.
7. Florida Retirement System	Senior Management Class for term of contract & payment into Retirement System by County at beginning of contract for upgrade of 7 years prior government service (approx. \$24,000)	Senior Management Class for term of contract (no upgrades although Attorney has 9 years prior non-County government service and 16 years County experience).
8. Cell Phone	Monthly allowance of \$25	County provides cell phone.
9. Professional memberships	Required membership in Florida Bar, pertinent sections of Florida Bar, American Bar Association and pertinent sections. All bar dues, occupational licenses and fees to be paid by County.	Required membership in Florida Bar; membership in sections and ABA permissive instead of mandatory. Bar dues paid by County. No occupational licenses or fees paid by County.
10. Annual and Sick Leave	Transferred from School Board to County 320 hours to be credited to sick leave & 300 hours to be credited to annual leave.	Retains hours accrued as assistant county attorney over 16 years (approximately 750 hours total).
11. Personal Leave	Attorney allowed to absent self from work "during normal business hours for personal or family time; provided Attorney remains reasonably available.... not ...considered or debited against vacation time." (Contract days – approx. \$15,000.)	Attorney "may from time to time absent herself during normal business hours.... shall remain reasonably available...." (No contract days.)
12. Private Office	Allowed to retain private office to preserve non-conforming use.	None.
13. Prohibition against representing clients before BOCC for 2 years	None.	Included.

*(Note – long-term employees are paid ½ of their sick leave, which provision remains for all means of termination other than termination by Board without cause.)

EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into the 19th day of April, 2006, by and between the Board of County Commissioners of Monroe County ("Board"), Florida, a political subdivision of the State of Florida, whose address is 500 Whitehead Street, Key West, Florida 33040, and Suzanne A. Hutton, an attorney licensed to practice law in the State of Florida, ("Attorney"), whose residential address is 551 Pine Lane, Big Pine Key, Florida 33043.

WHEREAS, Attorney is presently filling the position of Interim County Attorney; and

WHEREAS, Board desires to hire Attorney as its County Attorney; and

WHEREAS, the parties have determined that the terms and conditions of this Agreement are to the equitable benefit of both parties;

NOW, THEREFORE, the Board and Attorney hereby agree as follows:

1. **Employment.** Attorney is hereby employed by Board as County Attorney, which position shall be a full-time position. Work hours performed, annual leave, personal leave, and sick leave hours taken will be documented on a form or forms to be provided by Board. Board agrees that any period of probationary service that may be applicable to the position of County Attorney under the provisions of the Monroe County Personnel Policies and Procedures Manual is hereby waived.

2. **Sole Client.** Attorney agrees that she will not provide legal services, whether for a fee or pro bono, for any other person or entity without the express written approval of the Board. It is the intent of this section that Attorney will have no other private or public clients.

3. **Post-Employment Restrictions.** Attorney agrees that, for a period of twenty-four (24) calendar months from the effective date of termination of this Agreement, Attorney shall conform to the requirements of Chapter 2, Article XXI, Monroe County Code, governing lobbying and procurement ethics for former officers and employees, and shall not represent clients before the Board or any of its advisory bodies.

4. **Disclosure of Financial Interests.** Section 112.3145, Florida Statutes, requires financial disclosure by a "local officer," and subsection (1)(a) defines local officer to include "any person holding one or more of the following positions: ...county or municipal attorney." Attorney agrees to make such disclosures on such forms and at such times as may be required by state law.

5. **Term of Agreement; Termination.**

A. **Normal Term.** The normal term of this Agreement will be for a period of forty-eight (48) calendar months, commencing at 9:00 A.M. on the 1st day of May, 2006, and ending at 5:00 P.M. on the 30th day of April, 2010.

B. **Extension of Term.** The parties shall have the following options for extension of term of agreement, to be mutually exercised by written addendum to this agreement. The first renewal option shall be for a term of eighteen months, and any further renewals shall each be for a term of twelve months.

C. **Termination of Agreement.**

1. By Board for Cause. This Agreement may be terminated by Board for cause by a majority vote of the Board of County Commissioners at a duly noticed public meeting. At least fifteen (15) days prior to the date on which the agenda for the Board of County Commissioners is prepared that contains the item of termination to be acted upon, Board will provide to Attorney a detailed written statement of the reason or reasons for which termination is being sought. The statement will include, but not be limited to, the act or acts, omission or omissions, or default or defaults which form the basis for which termination is sought, along with the relevant date or dates, time or times, and location or locations. As used in this paragraph, "for cause" means (a) dishonesty with respect to the business and operation of the Board; (b) confirmed violation of the Board's drug policy; (c) refusal to cooperate in an investigation regarding any aspect of the business or operation of the Board, which investigation is conducted by or at the express direction of the Board; (d) conviction of a crime which is classified as a felony or a crime involving moral turpitude; and (e) gross neglect or willful or intentional misconduct.

2. By Attorney for Breach. This Agreement may be terminated by Attorney upon a breach of this Agreement by Board, provided the Board has not cured the breach within thirty (30) days following receipt of the notice of the breach. If the breach has not been cured, termination will be effective on the thirty-first day following receipt of written notice from Attorney by the Board. Notice shall be deemed to be received by the Board if sent to the Mayor.

3. By Normal Expiration. This Agreement is terminated upon its normal expiration date as stated in Section 5.A. Upon normal expiration without a renewal, Attorney will be entitled only to payment for salary through the effective date of resignation, plus the full amount attributable to accrued annual leave and one-half the amount attributable to accrued sick leave, as is provided to all County employees of the length of service Attorney has with the County.

4. By Board Without Cause. Board may terminate this Agreement without cause, effective thirty (30) days after giving written notice to Attorney by hand delivery or US mail, sent certified, return receipt requested, deemed effective notice upon receipt or attempted delivery. Such termination will be by majority vote of the Board at a duly noticed public meeting. Upon the vote of termination, Board and Attorney may agree that Attorney remain within the Office of the County Attorney, accepting an Assistant County Attorney position, retaining Senior Management status, and to be paid at an annual salary which shall be computed by adjusting the Attorney's annual salary as of March 15, 2006, for all merit and cost-of-living raises which Attorney would have received during the time of this contract had Attorney remained in her position as an Assistant County Attorney, and to transfer all accrued sick and annual leave to said position. In the event that the parties do not agree to Attorney remaining in the Office of the County Attorney, within thirty (30) days after the effective date of termination, County shall pay to Attorney a sum equal to one-half of the per annum salary which Attorney is receiving as of the date of the vote of termination plus payment for all unused annual leave and all unused sick leave. Upon payment in full or reappointment to an Assistant County Attorney position, Attorney shall execute a general release in favor of all officers, members, and employees of Board relating to any cause or causes of action Attorney has, had, or may have related to the Agreement and the termination thereof. The general release shall encompass all applicable federal, state, and local laws and ordinances relating to claims of illegal discrimination, intentional and unintentional torts, whistle blower rights, and all other types of claims whether known or unknown through the date of cancellation. To the extent that it is prohibited by applicable federal, state or local law, this provision shall be deemed void and of no effect.

D. Resignation. In the event that Attorney resigns from the position of County Attorney prior to the normal expiration date of this Agreement, she shall be entitled only to payment for salary through the effective date of resignation, plus the full amount attributable to accrued annual leave and one-half the amount attributable to accrued sick leave, as provided to all County employees of the length of service Attorney has with the County. At least thirty days prior to the effective date of resignation, written notice of resignation shall be delivered to the Mayor by hand delivery or US mail, sent certified, return receipt requested, deemed effective notice upon receipt or attempted delivery.

6. Compensation.

A. Amount. The Board will pay to Attorney, as and for a base salary, the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) per annum for the first year of employment. The base salary shall be increased thereafter according to the County policy of cost-of-living and merit increases provided to other County employees.

B. Payment. Base salary payments will be paid in equal biweekly installments (26 pay periods per annum), or as otherwise may be mutually agreed to in writing.

C. Professional Certification. Attorney is certified by the Florida Bar as a specialist in City, County, and Local Government Law. Pursuant to Sec. 2-360(c), Monroe County Code, Attorney shall be paid \$250.00 monthly in addition to the base salary.

D. Attorney shall be entitled to health, accidental death & dismemberment and life insurance coverage under County group policies, and shall retain the right to the health insurance coverage available to retirees who were hired prior to October 1, 2001, pursuant to Resolution No. 119-2001, as modified by Resolutions No. 154-2003 and 354-2003. Nothing in this agreement shall set aside Attorney's rights under the "Rule of 70."

7. Transportation Allowance. Attorney agrees that she will be responsible for providing her own motor vehicle for transportation within the limits of Monroe County that may be necessary, required, or appropriate in fulfilling her responsibilities and duties under this Agreement. In lieu of the preparation, maintenance, submission, review, approval, and auditing of detail travel expense reimbursements, and as partial consideration for Attorney's entering into this Agreement, Board agrees to pay to Attorney the sum of FIVE HUNDRED FIFTY DOLLARS (\$550.00) per month as and for a transportation allowance. For travel out of Monroe County by motor vehicle, Attorney will be reimbursed by Board on a per trip basis at the rate allowed for under Chapter 112, Florida Statutes, with mileage calculated as if departure commenced at the Monroe County-Dade County line and return ended at the Monroe County-Dade County line. At its sole discretion, and upon request by Attorney, Board may authorize the reimbursement of Attorney's actual expenditures where documented evidence is provided detailing the actual expenses incurred.

8. Travel Reimbursement. Board agrees to pay to or reimburse Attorney for the costs of meals, other expenses and lodging incurred by Attorney that may be necessary, required, or appropriate in fulfilling Attorneys duties and responsibilities under this Agreement. Meals, other expenses and lodging will be paid for or reimbursed at the rates specified in Section 112.061, Florida Statutes. At its sole discretion, and upon request by Attorney, Board may authorize the reimbursement of Attorney's actual expenditures where documented evidence is provided detailing the actual expenses incurred.

9. Florida Retirement System. Board agrees that the position of County Attorney will be a position classified as, and eligible for the benefits provided under, the Senior Management Service Class, in accordance with Section 112.055, Florida Statutes. Board will contribute such amounts at such times as is required by Section 112.055, Florida Statutes, and any other applicable law or statute.

10. Duties and Responsibilities.

A. General. Attorney will have those responsibilities and perform those duties which are listed in the attached Position Description (Attachment A), incorporated herein by reference. If a duty or responsibility contained in the Position Description is in conflict with a duty or responsibility contained in this Agreement, the duty or responsibility specified in this Agreement will prevail.

B. Exemptions. Nothing in this Agreement or in the Board's policies, rules, and procedures will limit Attorney's right to make passive financial investments; to participate in charitable service or work with charitable organizations and other community activities, including trade and professional organizations; or to undertake other activities which do not interfere with the performance of Attorney's duties under this Agreement, it being mutually agreed that Attorney's participation in such activities is of benefit to the Board.

C. Availability. Attorney will be reasonably available to Board members and key Board staff twenty-four (24) hours per day. Such availability will be by telephone or electronic messaging, or in person. Board shall maintain for Attorney cellular telephone service.

D. Ethical Considerations. Board and Attorney agree that, in general, it is the Board as a whole that is the client entity of the Attorney. However, as recognized by the Rules of Professional Conduct of The Florida Bar, the attorney-client relationship for organizational and governmental agencies is not the same as the attorney-client relationship for private individuals, and Attorney's professional relationship with the Board will be consistent with the requirements of Rule 4-1.13 of the Rules of Professional Conduct.

E. Legal Opinions. Board and Attorney agree that from time to time Attorney will be requested to render a legal opinion on matters of significance to the Board, the County Administrator, or the County Clerk. Board and Attorney agree that, consistent with the ethical obligations of the Attorney to the Board, (1) all requests for an opinion will be in writing; (2) all requests will be communicated to Attorney directly by or through a County Commissioner, the County Administrator, or the County Clerk; and (3) all opinions rendered will be in writing, addressed to the Board of County Commissioners, and will be over the signature of the Attorney. It is expressly agreed the Attorney will not entertain requests for, nor will render a written opinion to, individuals or entities who are members of the general public or special interest groups, or who are representatives of governmental agencies unless specifically directed to do so by a majority vote of the Board in a duly noticed public meeting.

11. Professional Memberships. Attorney will maintain her membership in good standing with The Florida Bar and the City, County & Government Law Section of The Florida Bar; and may become a member of, and maintain membership status in divisions or sections of The Florida Bar which are pertinent to the issues addressed by the County Attorney's office. Additionally, Attorney may become a member of the American Bar Association and a member of the pertinent sections or divisions. All dues and costs for obtaining and maintaining the memberships delineated above will be paid for by Board.

12. Local Liaisons. Attorney will maintain liaisons with the legal representatives of local governmental and public agencies located within the geographical limits of Monroe County, to include but not be limited to Islamorada, Village of Islands; City of Layton; City of Key Colony Beach; City of Marathon; City of Key West; Florida Keys Mosquito Control District; Florida Keys Aqueduct Authority; Monroe County Housing Authority; and the School Board of Monroe County.

13. Office Space, Staff and Supporting Services.

A. Office Space. Board will provide office space for Attorney.

B. Staff. Board will provide sufficient qualified staff to the office of County Attorney to assist Attorney in efficiently, productively, and professionally meeting the mission, goals, and objectives of the County Attorney's office and the duties of the Attorney. Staff will include, but not be limited to, attorneys licensed to practice law in the State of Florida, paralegals and/or legal assistants, and administrative support.

C. Supporting Services. Board will provide suitable utilities, telephone service, computer hardware and software, electronic research and e-mail services, world wide web and internet access, books and subscriptions, periodicals, office supplies, photocopy equipment, county web-page presence and server access and storage space, postage, office equipment and furniture, and other similar materials, equipment and services as may be necessary for the proper, productive, and efficient operation of the office of County Attorney.

14. Annual Leave and Sick Leave; Transfer. Beginning with the first month of employment under this Agreement, Attorney will earn and be credited with sick leave hours and annual leave hours at a rate per month equal to the highest rate earned by any other employee or officer of Board. Attorney shall retain all annual and sick leave accumulated as an assistant county attorney and as interim county attorney. Attorney may accumulate unused annual leave without limit and no unused annual leave shall be forfeited due to nonuse, any provisions of the Monroe County Personnel Policies and Procedures Manual to the contrary notwithstanding.

15. On Call. Due to the nature of Attorney's duties and the requirements of the position of County Attorney, interference with Attorney's private life is to be expected and it is recognized that Attorney may from time to time absent herself during normal business hours for personal reasons; however, Attorney shall remain reasonably available to Board members and key Board staff by telephone or other electronic means.

16. Participation in Educational and Board-Related Events. Board agrees to budget for and to pay the costs incurred by Attorney in attending seminars, continuing legal education courses, Board-related events and out-of-county meetings as may be necessary or appropriate to Attorney's duties and responsibilities under this Agreement.

17. Indemnification and Cooperation.

A. Indemnification. The Board will defend, hold harmless, and indemnify Attorney against any tort, professional liability, or other legal demand, claim, or action which is related directly or indirectly to Attorney's actions in her capacity as County Attorney.

B. Cooperation. In the event of actual or threatened litigation and/or administrative proceedings involving the Board which arise out of an action or actions which occurred or are alleged to have occurred while Attorney was acting in her capacity as County Attorney, Attorney will cooperate with the Board and its counsel in defending and resolving the litigation or proceeding. In such regard, Board agrees to pay Attorney's reasonable travel and subsistence expenses incurred in cooperating with the Board and its counsel, including preparation for and actual discovery, settlement, and trial and hearing or other resolution of such matters.

1. Attorney agrees that, unless required by law, she will not cooperate with or assist any party, person, or entity who has, had, or may have, or asserts that he, she, or it has or may have any claim of any nature against the Board, its agents, officers, or employees, unless the Board or its authorized agent expressly consents in writing to waive this provision of this Agreement.

2. Attorney shall not disclose to any person, party, or entity any confidential, proprietary, time-sensitive, or non-public information relating to the Board or its operations unless required by law to do so.

18. Governing Law; Attorney's Fees and Costs; Venue. This agreement is made in the State of Florida and shall be governed by Florida law. Venue for any action arising out of this agreement shall be in Monroe County.

19. Form and Amendment of Agreement. This is the entire agreement between the parties and may not be modified or amended except by a written document signed by the party against whom enforcement is sought. This agreement may be signed in more than one counterpart, in which case each counterpart will constitute an original of this agreement. Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this agreement. Wherever used herein, the singular will include the plural, the plural will include the singular, and pronouns will be read as masculine, feminine or neuter as the context requires. The prevailing party in any litigation, arbitration or mediation relating to this agreement shall be entitled to recover its reasonable attorneys' fees from the other party for all matters, including, but not limited to, appeals.

WHEREFORE, the parties hereto have signed and sealed this agreement on the date first above written.

(SEAL)

Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMISSIONERS OF
MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor/Chairman

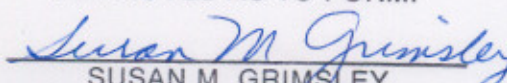
Witnesses:

SUZANNE A. HUTTON, ESQ.

By: _____

Hutton/Co. Atty.

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


SUSAN M. GRIMSLEY
ASSISTANT COUNTY ATTORNEY